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No. 01-1289

IN THE
Supreme Court of the United States

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Petitioner,

v.

CURTIS B. CAMPBELL and INEZ PREECE CAMPBELL,

Respondents.

ON WRIT OF CERTIORARI
TO THE UTAH SUPREME COURT

MOTION FOR LEAVE TO FILE SECOND SUPPLEMENTAL BRIEF FOR PETITIONER AND BRIEF

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MOTION FOR LEAVE TO FILE SECOND SUPPLEMENTAL BRIEF

Pursuant to Rules 21 and 25.6, Petitioner State Farm Mutual Automobile Insurance Company respectfully seeks leave of Court to respond to issues raised in Respondents' Brief in Response to Supplemental Brief of Petitioner, filed on December 12, 2002. Respondents' Brief improperly goes beyond matters raised by State Farm's Supplemental Brief, filed December 9, 2002, which merely brought to the Court's attention the newly issued decision in *White v. Ford Motor Co.*, No. 99-15185, 2002 WL 31687641 (9th Cir. Dec. 3, 2002). State Farm's Second Supplemental Brief is confined to correcting certain misstatements made in Respondents' Brief and providing the Court with the full text of State Farm's proposed jury instruction No. 40, partially quoted by Respondents in their Brief.

Respectfully Submitted,

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December 12, 2002

CORPORATE DISCLOSURE STATEMENT

The corporate disclosure statement for Petitioner State Farm Mutual Automobile Insurance Company was set forth on page ii of Petitioner's Opening Brief, and there are no amendments to that statement.

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PETITIONER'S SECOND SUPPLEMENTAL BRIEF

Petitioner State Farm respectfully submits this Second Supplemental Brief in order to correct certain misstatements made in Respondents' Brief in Response to Supplemental Brief of Petitioner. State Farm does not herein address matters already discussed in its briefing.

1. Plaintiffs misleadingly cite State Farm's proposed jury instruction No. 40 as "t[elling] the jury that it could consider the effect of State Farm's behavior 'on the lives of plaintiffs and lives of other policy holders.'" Resp. Supp. Br. at 1. The clear implication of plaintiffs' partial quotation of this proposed jury instruction is that State Farm acceded to the jury's consideration of all of State Farm's behavior nationwide on the issue of punitive damages. In fact, State Farm's proposed instruction No. 40 (which was not given) would have told the jury that it could consider the "*nature of State Farm's decision not to settle the Cache County Lawsuit [the third-party lawsuit against Mr. Campbell] within the insurance policy limits*" and the "effect State Farm's decision not to settle had on the lives of plaintiffs and lives of other policy holders." R. 7562 (emphasis added);[1] *see also* L. 394 (State Farm's Proposed Instruction No. 46).

2. Rather than confine their response to the *White* decision, plaintiffs improperly take the opportunity to attempt to shore up the deficits in their briefing by a late submission of citations

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[1] State Farm's Proposed Instruction No. 40 reads in its entirety as follows:

If plaintiffs satisfy the elements necessary to recover punitive damages and if you, in your discretion, decide to award punitive damages, you may consider the following seven factors in deciding the amount of punitive damages:
1. The relative wealth of State Farm;
2. The nature of State Farm's decision not to settle the Cache County Lawsuit within the insurance policy limits;
3. The facts and circumstances surrounding State Farm's decision not to settle;
4. The effect State Farm's decision not to settle had on the lives of plaintiffs and lives of other policy holders;
5. The probability that State Farm maliciously and intentionally or knowingly and recklessly will fail to settle future third-party lawsuit for the policy limits when an excess verdict is likely;
6. The relationship between State Farm and plaintiffs; and
7. The ratio or relationship between any award of actual damages and the amount of punitive damages. R. 7562.

that purport to support the Utah Supreme Court's clearly erroneous statement that State Farm's "policies have affected vast numbers of other Utah customers." *See* Pet. 30a. Plaintiffs cite a very limited number of pages from the approximately 6,500 pages of trial testimony in this case, and even the small number of pages cited by plaintiffs includes pages with no reference whatsoever to Utah consumers other than the Campbells. In particular, none of the pages cited by plaintiffs from the trial testimony of their experts Fye and Prater contain testimony regarding other Utah consumers. Rather, that testimony addresses the facts of the Campbell case and other matters not evidencing State Farm's handling of the claims of other Utah policyholders. *See* JA 1215a-16a, 1241a, 1344a, 1356a (Fye); 2151a (Prater). More than half of the approximately 70 pages that plaintiffs cite from the Joint Appendix are from the testimony of Ray Summers, who was fired by State Farm in 1982 for falsifying files (JA 2955a-56a; Pet. Br. at 5 n.5), and who even plaintiffs' counsel admitted in summation was a dishonest man.[2] JA 3198, 3226. Neither the record nor plaintiffs' citations support plaintiffs' contention that the "other acts" conduct in this case was mostly Utah conduct or anything close to that. Plaintiffs also do not cite any testimony or evidence factually linking the alleged PP&R scheme to State Farm's decision to try, rather than settle, the third-party claims against Mr. Campbell.

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[2] In addition, Summers admitted in his testimony that he was not trained by State Farm to commit dishonest acts and that such acts were a "deviation" from "company philosophies." JA 2976a-79a.